

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-02466

SAN JUAN CITIZENS ALLIANCE,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF THE INTERIOR, an agency of the United States;
UNITED STATES BUREAU OF LAND MANAGEMENT, an agency within the United States
Department of the Interior;

Federal Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, SAN JUAN CITIZENS ALLIANCE (“SJCA”), alleges as follows:

I. INTRODUCTION

1. This action is premised upon, and consequent to, a violation of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* It challenges the unlawful failure of the above-named Federal Defendants, the UNITED STATES DEPARTMENT OF THE INTERIOR, and UNITED STATES BUREAU OF LAND MANAGEMENT (collectively, “Department”), to respond to SJCA’s FOIA request and administrative appeal within the time and in the manner required by FOIA. Although the Department has disclosed certain documents responsive to plaintiff’s request, it has unnecessarily, unreasonably, and unlawfully redacted (blacked-out) certain information responsive to this request, improperly asserting the such information is subject to withholding from disclosure pursuant to FOIA Exemption Four, 5 U.S.C. § 552(b)(4).

2. On February 26, 2013, SJCA submitted a FOIA request to Defendant BUREAU OF LAND MANAGEMENT (“BLM”) seeking information regarding two things: first, the Expressions of Interest (“EOIs”) submitted for the parcels located in the BLM’s Tres Rios Field Office (“TRFO”) to be included in the now deferred February 2013 competitive oil and gas lease sale, including information identifying the persons or entities who submitted the EOIs and, second, all documents related to the EOIs listed above.

3. BLM’s response, dated June 21, 2013, invoked FOIA Exemption 4 to withhold non-exempt information.

4. On July 25, 2013, SJCA filed an administrative appeal of the Department’s withholding of requested information.

5. To date, the Department has failed to resolve SJCA’s appeal by either providing the responsive information requested, or issuing an administrative decision invoking an appropriate exemption to FOIA disclosure.

6. The FOIA requires that the Department issue a final decision on SJCA’s appeal within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A)(ii). SJCA sought to engage the Department in a dialogue regarding its FOIA appeal so that a response could be obtained, without success.

7. Prompt access to the requested information is crucial to SJCA’s work pertaining to BLM TRFO’s deferred February 2013 competitive oil and gas lease sale, including SJCA and the public’s ability to engage BLM’s decisionmaking process on a fully-informed basis. Defendants are unlawfully withholding public disclosure of information sought by SJCA, information to which it is entitled and for which no valid disclosure exemption applies.

Defendants' failed to comply with the statutory mandates and deadlines imposed by FOIA through its failure to provide a final determination resolving SJCA's FOIA appeal within the time required by law. Accordingly, SJCA seeks declaratory relief establishing that defendants have violated FOIA. SJCA also seeks injunctive relief directing the Department to promptly provide SJCA with the requested information on EOIs, now and for all future requests.

8. Given the time sensitive nature of this matter, SJCA requests expedited consideration of this action pursuant to 28 U.S.C. § 1657(a).

9. If they prevail, SJCA will seek an award of attorneys' fees, costs, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and FOIA, 5 U.S.C. § 552(a)(4)(E).

II. JURISDICTION & VENUE

10. Jurisdiction is proper in this Court pursuant to 5 U.S.C § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et. seq.*

11. This action reflects an actual, present, and justiciable controversy between the Plaintiff and the Defendants; Plaintiff's interests will be adversely affected and irreparably injured if Defendants continue to violate FOIA as alleged herein.

12. The requested relief is authorized by 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

13. The requested relief would redress the actual, concrete injuries to Plaintiff caused by the Defendants' failure to comply with duties mandated by FOIA, and the regulations promulgated pursuant to thereto.

14. The challenged agency action is final and subject to judicial review pursuant to 5 U.S.C. § 552(a)(6)(A)(ii).

15. Plaintiff filed an administrative appeal on July 25, 2013, and has exhausted any and all available and required administrative remedies.

16. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district because the FOIA request was made on behalf of SJCA, which is located in Durango, Colorado, and because some significant portion, if not all, of the records at issue are located in Colorado. Additionally, SJCA has members and staff that work and/or reside within this judicial district. Assignment is proper in this district and division for the same reasons.

17. Declaratory relief is appropriate under 28 U.S.C. § 2201.

18. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

III. PARTIES

19. Plaintiff SAN JUAN CITIZENS ALLIANCE is a non-profit organization with over 500 members in the Four Corners region. SJCA is actively involved in monitoring and scrutinizing energy development, overseeing government decisionmaking and compliance with environmental laws, advocating for cleaner air quality and better stewardship of natural systems, promoting reduced energy consumption, energy efficiency and renewable energy, and working for improvements to community health. SJCA's members and staff live in, use and enjoy the communities and landscapes affected by the challenged actions, and they plan to continue to do

so in the future. SJCA brings this action on its own behalf and on behalf of its adversely affected members.

20. The relief sought by SJCA would help remedy the injuries suffered by the Plaintiff and their members, as well as provide valuable and necessary information that will allow SJCA, and the general public, to engage in the Department decisionmaking process on a fully informed basis.

21. Defendants would be required to disclose currently withheld information regarding the submission of EOIs pertaining to the BLM TRFO's now deferred February 2013 oil and gas lease sale, as well as be enjoined from withholding the requested information in all future FOIA undertakings.

22. The relief sought would redress these injuries.

23. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is an agency of the executive branch of the United States and is responsible for the management of nine technical agencies, including the Bureau of Land Management. The Department is responsible for hearing all administrative FOIA appeals, including the underlying administrative appeal, here. In this managerial capacity, the Department is responsible for implementing and complying with federal law, including the federal laws implicated by this action. The Department has failed to issue an administrative decision regarding the withholding of certain information requested by SJCA.

24. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT is an agency within the United States Department of the Interior and is responsible for managing public lands and resources in Colorado, including federal onshore oil and gas resources and the

leasing program for those resources. In this managerial capacity, BLM is responsible for implementing and complying with federal law, including the federal laws implicated by this action. BLM's response to SJCA's FOIA request unlawfully redacted information responsive thereto.

IV. STATUTORY BACKGROUND

25. The Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et. seq.*, requires that an agency of the federal government disclose documents and information to any person except where the document falls under a specifically enumerated exemption. *See* 5 U.S.C. § 552 (b).

26. The U.S. Supreme Court has stated: "[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act," and later continued, "[c]onsistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass."

27. The specific language of Exemption 4 states that FOIA "does not apply to matters that are: Trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

28. The Department has further issued guidance regarding the release of agency records through FOIA, providing: "[i]t is our policy to make records of the Department available to the public consistent with the spirit of the FOIA and the Privacy Act." 43 C.F.R. § 2.2.

29. BLM policy states: "It is the policy of the BLM to make records available to the public to the greatest extent possible in keeping with the spirit of the Freedom of Information Act (FOIA)."

30. BLM policy further provides: "The intent of FOIA is based on openness to

citizens and the informed consent of the governed.”

V. STATEMENT OF FACTS

31. On November 16, 2012, the BLM Colorado State Office issued a Notice of Competitive Lease Sale identifying 12 parcels and approximately 12,000 acres of federal mineral estate located in La Plata, Archuleta, Montezuma, Dolores and San Miguel counties, Colorado, to be included in BLM’s February 14, 2013 competitive oil and gas lease sale.

32. On December 14, 2012, SJCA, along with a coalition of other environmental organizations, submitted a Protest challenging the inclusion of all 12 TRFO parcels in the February 2013 lease sale, citing, among other concerns, the insufficiency of the agency’s National Environmental Policy Act (“NEPA”) analysis and decisionmaking process.

33. On February 7, 2013, BLM announced the temporary deferral of all TRFO parcels.

34. On February 26, 2013, SJCA submitted a FOIA request to BLM seeking the following information:

The Expressions of Interest submitted for the parcels located in the Uncompahgre Field Office included in the August 2012 Oil and Gas Lease Sale, including information identifying the persons or entities who submitted the Expressions of Interest; and

All documents related to the Expressions of Interest listed above.

35. On March 11, 2013, BLM’s Colorado State FOIA Officer, Ms. Debbie Suehr, sent a letter acknowledging receipt of SJCA’s FOIA request, and assigned it FOIA control number BLM-2013-00403.

36. On March 22, 2013, Ms. Suehr sent an email and telephoned SJCA’s counsel requesting that SJCA withdraw their FOIA request until April 15, 2013 pending BLM’s decision

whether to appeal a U.S. District Court for the District of Colorado decision, *Citizens for a Healthy Community v. Department of Interior, et. al.*, Civ. No. 1:12-cv-01661-RPM, the outcome of which had direct relevance to SJCA's above-referenced FOIA request. This email noted that "[s]hould BLM decide not to appeal this new request will go into the simple processing track and will be responded to within 3-5 workdays," and later continued that "[s]hould BLM decide to appeal we will still be able to respond to the new FOIA request within 3-5 workdays as the requirement to provide submitter's notice is already completed."

37. On March 25, 2013, SJCA's counsel sent Ms. Suehr a letter acknowledging their agreement that BLM may delay its FOIA response beyond the statutorily mandated 20-day deadline, as provided in 5 U.S.C. § 552(a)(6)(A)(i), until April 15, 2013, after which time the agency would promptly issue its response to SJCA's FOIA request, as consistent with the agency's expressed timeframe.

38. On April 15, 2013, SJCA's counsel sent Ms. Suehr a letter to ensure that she was made aware of BLM's decision not to appeal the Court's decision in *Citizens*, Civ. No. 1:12-cv-01661-RPM, and to affirm our expectation that the requested information would be promptly released.

39. On May 2, 2013, BLM sent SJCA's counsel a letter regarding the subject FOIA request, stating that the agency engaged in a consultation process with the submitters of the requested documents, that this process resulted in "insufficient information from the submitters ... to aid in completing the processing of your FOIA request," and that "BLM again needs to consult with the submitters for additional information that we need to proceed."

40. On May 2, 2013, SJCA's counsel responded to BLM, noting that the Court's

decision in *Citizens*, Civ. No. 1:12-cv-01661-RPM unambiguously found that BLM could not rely on FOIA Exemption 4 to withhold the identity of EOI submitters, expressing confusion as to why additional consultation was needed, and requesting prompt resolution to the subject FOIA request, which was submitted to the agency 47 business days earlier.

41. On May 27, 2013, SJCA's counsel sent another letter to BLM requesting a response to the subject FOIA request, which was submitted 63 business days earlier.

42. On June 21, 2013, 82 business days after SJCA's FOIA request was made, BLM issued its response. BLM's response released the EOIs that precipitated the February 2013 TRFO lease sale – including the names of the EOI submitters – but redacted (blacked-out) the other responsive information, including the name of an EOI submitter's client, providing that the agency “agrees with the company that the release of this information could cause substantial commercial harm to the business should client information be released,” and citing FOIA Exemption 4, 5 U.S.C. §§ 552 (b)(4).

43. Although EOIs are at times submitted directly to BLM by the oil and gas industry, it is also common practice for industry to use what are known as “landmen” – or third-party middle-men – to submit EOIs to the agency on their behalf.

44. On July 25, 2013, SJCA filed an administrative FOIA appeal with the Department regarding BLM's redacted FOIA response.

45. “FOIA requires an agency to make a determination on an appeal within 20 workdays after the receipt of such appeal.” 5 U.S.C. § 552(a)(6)(A)(ii). Accordingly, the deadline for the Department's appeal determination was August 23, 2013.

46. On August 21, 2013, SCJA's counsel sent the Department's FOIA Appeals

Officer a letter reminding the agency of the upcoming deadline and expressing SJCA's desire for a timely determination of their appeal.

47. On August 27, 2013, SJCA's counsel called the Department's FOIA Appeals Office to inquire about SJCA's administrative appeal. While the Department confirmed that SJCA's appeal had been received, counsel was told that the appeal was still under review and that there was no anticipated date when a decision would be reached. SJCA's counsel sent the Department's FOIA Appeals Officer a letter the same day to memorialize this conversation and to express SJCA's expectation of prompt resolution of their appeal.

48. To date, neither SJCA nor their counsel has received any correspondence from the FOIA Appeal's Office regarding their appeal.

49. The information sought by plaintiff's in this appeal is critical to SJCA's work pertaining to BLM TRFO's February 2013 oil and gas lease sale, and is central to SJCA and the public's ability to engage BLM's decisionmaking process on a fully-informed basis.

50. BLM's TRFO has indicated their intention to re-list the subject parcels in an upcoming lease sale.

51. Given the time-sensitive nature of the information sought, as well as the Department's failure to either communicate with SJCA or issue an appeal determination within the statutorily prescribed time period, SJCA is left with no other option than to initiate this action.

52. As of the date this action was filed, the Department has not issued a final determination on SJCA's FOIA appeal.

53. SJCA has fully exhausted all administrative remedies required by FOIA. 5 U.S.C.

§§ 552(a)(6)(A), (a)(6)(C).

54. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF Violation of FOIA (Constructive Denial / Unlawful Withholding)

55. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

56. In response to Plaintiff's FOIA request and appeal, the Defendants have provided some information to Plaintiff, but it has redacted and withheld other information, unlawfully invoking FOIA Exemption 4. 5 U.S.C. § 552(b)(4).

57. FOIA Exemption 4 does not apply to the information being withheld by Defendants in this case and, thus, FOIA Exemption 4 is inapplicable to bar Plaintiff's statutory right to the information's release. *See* 5 U.S.C. § 552(b)(4).

58. Plaintiff has a statutory right to have the Department process its FOIA request and appeal in a manner that complies with FOIA.

59. FOIA establishes that an agency's failure to comply with the Act's deadlines shall work a constructive denial of the request and that the requester's administrative remedies shall be deemed exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

60. Defendants have violated Plaintiff's rights under FOIA by unlawfully withholding information responsive to Plaintiff's FOIA request.

61. Based on the nature of Plaintiff's professional activities, it will undoubtedly continue to request information from Defendants pursuant to FOIA in the foreseeable future.

62. Plaintiff's organizational activities will be adversely affected if Defendants are allowed to continue violating FOIA's disclosure provisions, as it has in this case.

63. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendants will continue to violate the rights of Plaintiff to receive public records under FOIA.

64. Plaintiff has fully exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552 (a)(6)(A), (a)(6)(C).

65. Plaintiff is entitled to reasonable costs of litigation, including attorney's fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

VII. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Order Defendants to promptly grant Plaintiff all of the information sought in this action;

B. Order Defendants enjoined from relying on an invalid regulation or practice in all future FOIA undertakings;

C. Declare Defendants' failure to disclose the documents requested by Plaintiff to be unlawful under FOIA, 5 U.S.C. § 552(a)(4)(A)(iii);

D. Award Plaintiff its costs and reasonably attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E), and 28 U.S.C. § 2412;

F. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 10th day of September 2013,

/s/ Kyle J. Tisdel

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